



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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August 13, 2001

Brian W. Burnett, Esq.
Callister, Nebeker & McCullough
Gateway Tower East, Suite 900
10 East South Temple
Salt Lake City, Utah 84133

RE: Request to Proceed With Water Development Right No. 91-231, Sunnyside Cogeneration Associates, Sunnyside Refuse and Slurry, C/007/035, Outgoing File

Dear Mr. Burnett:

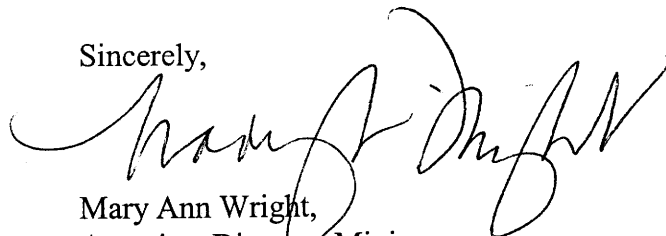
This letter responds to your July 17, 2001 letter to Pamela Grubaugh-Littig, Utah Division of Oil, Gas & Mining (DOGM) and Kurt Seel, Assistant Attorney General. In your letter your client, Sunnyside Cogeneration Associates (SCA), requests authorization from DOGM to develop a water right identified as No. 91-231 located in the Manshaft at the Sunnyside Mine. You indicated that the Manshaft has been sealed and the property reclaimed. Attached to your letter was the "Agreement for Property Access" dated July 10, 2001 between SCA, East Carbon City, and Sunnyside City, which indicates written approval by the DOGM was required for your client to proceed with the project.

Based upon the representations in your July 17, 2001 letter and the "Agreement for Property Access," it is the Division's understanding that water to be produced from the Manshaft does not satisfy, nor would be put to a use which would satisfy, the definition of "surface coal mining and reclamation operations" or a "surface coal mining operation" as defined under the Utah Coal Mining and Reclamation Act, Utah Code 40-10-3(19), (20), nor the definition of a "mining operation," as defined under the Utah Mined Land Reclamation Act, Utah Code 40-8-4(8). For this reason neither a reclamation plan nor a reclamation surety appears to be necessary under those acts. However, in the event the use or development of this water right would satisfy the above-described definitions, or otherwise subject the proposed work to the Utah Coal Mining and Reclamation Act or the Mined Land Reclamation Act, DOGM would re-evaluate your client's request.

Although SCA's proposed work does not appear to trigger reclamation planning and surety requirements, DOGM understands it will involve reopening a recently sealed mine shaft which continues at this time to be the subject of the reclamation jurisdiction of DOGM. The Manshaft was initially sealed to address both safety and environmental concerns. Reopening the manshaft has the potential to increase safety and environmental risks. For this reason, if SCA provides DOGM the same indemnification, defense and hold harmless protection described in paragraph "G" of the Agreement, DOGM has no objection to SCA performing the work described in the "Agreement for Property Access" dated July 10, 2001.

If your client agrees to extend the indemnification protection to DOGM, please have them sign below and return a fully executed copy of your client's indemnification to me at the above address. If you have any questions, comments or concerns, please do not hesitate to contact me at (801) 538-5306 or Pamela Grubaugh-Littig at (801) 538-5268.

Sincerely,



Mary Ann Wright,
Associate Director, Mining

vs

Attachment

cc: Kurt Seel, AAG
Pamela Grubaugh-Littig
Price Field Office

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Indemnification

SCA, its successors and assigns, shall indemnify, defend and hold harmless the Utah Division of Oil, Gas & Mining, its officers, employees, agents, lessees, successors and assigns from any and all liabilities, losses, claims (including without limitation third party claims for personal injury, real or personal property damage), demands, penalties, fines, settlements, damages, lawsuits, response, remedial or inspection costs, government enforcement actions, judgments, interest and losses, including consultant and attorney's fees, together with all other costs and expenses, of whatever kind or nature, known and unknown, contingent or otherwise, whatsoever arising after the date of this Agreement from or in any way related to SCA's activities under this Agreement and development of Water Right No. 91-231, unless such liability, loss, claim is caused by the action of the Utah Division of Oil, Gas & Mining.

SUNNYSIDE COGENERATION ASSOCIATES, a Utah
joint venture, composed of:

By: SUNNYSIDE HOLDINGS I, INC., a Delaware
corporation, a joint venture partner

By:
Name:
Title:

By: SUNNYSIDE II, L.P., a Delaware limited
partnership, a joint venture partner

By: SUNNYSIDE II, INC., a Delaware
corporation, the general partner of
Sunnyside II, L.P.

By:
Name:
Title: